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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,474	10/24/2003	Jadwiga Malgorzata Bialek	F6176(V)	2551

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UNILEVER INTELLECTUAL PROPERTY GROUP
700 SYLVAN AVENUE,
BLDG C2 SOUTH
ENGLEWOOD CLIFFS, NJ 07632-3100

EXAMINER

PADEN, CAROLYN A

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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10/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/693,474	Applicant(s) BIALEK ET AL.	
	Examiner Carolyn A. Paden	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,8-11,14,16,18 and 20-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,8-11,14,16,18 and 20-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 7, 2007 has been entered.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 8-11, 14, 16, 18 and 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hercules Inc (EP 075795) in view of Fischer as further evidenced by Lowe and Schwartzberg for reasons of record.

Hercules discloses low fat salad dressing made to contain a pectin derivative as a partial or complete fat substitute. The dressing formulation is shown at the example bridging columns 6 and 7, starting at line 37. In this case the pectin component is regarded as the fiber source. Casein

and whey protein are selected proteins for the composition. The oil sources for use in the product are shown at column 5, lines 44-46. Up to 35% fat is disclosed for use at column 5, line 9. The pH of the emulsion is shown at column 2, line 58. The use of egg white is contemplated at column 5, line 17. Claim 1 appears to differ from Hercules in the recitation of the use of an insoluble fiber in the emulsion, in the recitation of the use of a viscosity building emulsifier. Fischer teaches the use of fruit fibers in foods. Herbacel AQ plus is disclosed as a source of pectin and fruit fiber. It is disclosed as useful in applications that include products where viscosity enhancement or thickening is acceptable. With the references of Hercules and Fischer before him, it would have been obvious to one of ordinary skill in the art to select Fischer's Herbacel as a pectin source for Hercules in order to provide a salad dressing with an enhanced viscosity. It is appreciated that the protein in Hercules is not described as being "viscosity-building" but no unobvious or unexpected result is seen from this feature because both whey and casein are defined as viscosity building emulsifiers in the specification. Further Lowe is relied upon to teach that casein is a well-known emulsifier for foods. Similarly egg white is also used as an emulsifier in foods. Applicant argues that Lowe teaches that casein

is used in water in oil emulsions and not for the oil in water emulsion of the claims. This argument has been considered but is not persuasive. First Lowe teaches that casein is useful for both of these types of emulsions and that egg white is also useful in creating oil in water emulsions. The dressing of Hercules is a low fat dressing so one of ordinary skill in the art would expect it to be oil in water emulsion. It is appreciated that HLB is not mentioned but an HLB of greater than about 8 is known in the art as defining oil in water emulsifier. So the emulsifier would be an expected to have the HLB value of the claims. It is also appreciated that the oil droplet size of the composition is not mentioned but no unobvious or unexpected results are seen from these features, particularly when a stable emulsion is formed. It is also appreciated that the settings from the homogenizer are not mentioned but to use one type of colloid mill over another would have been an obvious matter of choice with regard to the particular homogenizing apparatus that is available.

Applicant has amended claim 1 to include the limitations of cancelled claim 7. Up to 5% egg ingredients are identified as ingredients in the present invention (column 5, lines 13-20). Lowe teaches that egg white is also useful as emulsifiers in creating oil in water emulsions. It would have

been obvious to one of ordinary skill in the art to expect the salad dressing of Hercules to contain the extent of emulsifier that is set forth in the claims.

Applicant has amended claim 11 to describe when the acidulant is added. Procedures 2 and 3 of Hercules (columns 8 and 9) show that the acidulant (vinegar) is added before the emulsion was made. It would have been obvious to one of ordinary skill in the art to expect the method of Hercules to incorporate an acidulant in the same manner that is shown in the claims.

Applicant argues that high levels of sugar and starch are required in Hercules. This is disagreed with because at column 6, lines 50-53, the ranges of sugar and carbohydrate contemplated are as low as 0%.

Applicant argues mouth feel but no difference is seen between the mouth feel of the claims the mouth feel of Hercules. No difference is seen from the dissipation of the product in the mouth of the claimed product and the dissipation of the product in the mouth of the Hercules product. Applicants' arguments relating to Fischer has been considered but is not persuasive. If one of ordinary skill in the art were looking to enhance the thickness of his salad dressing, it would have been obvious to look to an additive with viscosity enhancing properties. Fischer clearly teaches the application of

his fiber "where viscosity enhancement or thickening are acceptable as a side effect of dietary fiber fortification". The fact that salad dressing was not mentioned in Fischer does not prohibit or teach away from a dietary fiber application to salad dressing.

It is appreciated that the fiber size is not mentioned in Watanabe but one of ordinary skill in the art would be able to adjust the bran fiber to an optimum size to achieve a desired mouth-feel.

The rejection of the claims over Watanabe as further evidenced by Lowe and Schwartzberg has been withdrawn in response to applicants' amendments to the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks, can be reached on (571) 272-1401 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CAROLYN PADEN
PRIMARY EXAMINER
GROUP 1800 1794